Workplace Safety and Insurance Appeals Tribunal

QUARTERLY REPORT

Production and Activity

For the Period
January 1 through March 31, 2004

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The Quarterly Report

Key Tribunal Activities

A) Tribunal Production

Productivity in Relation to Case Management Objectives

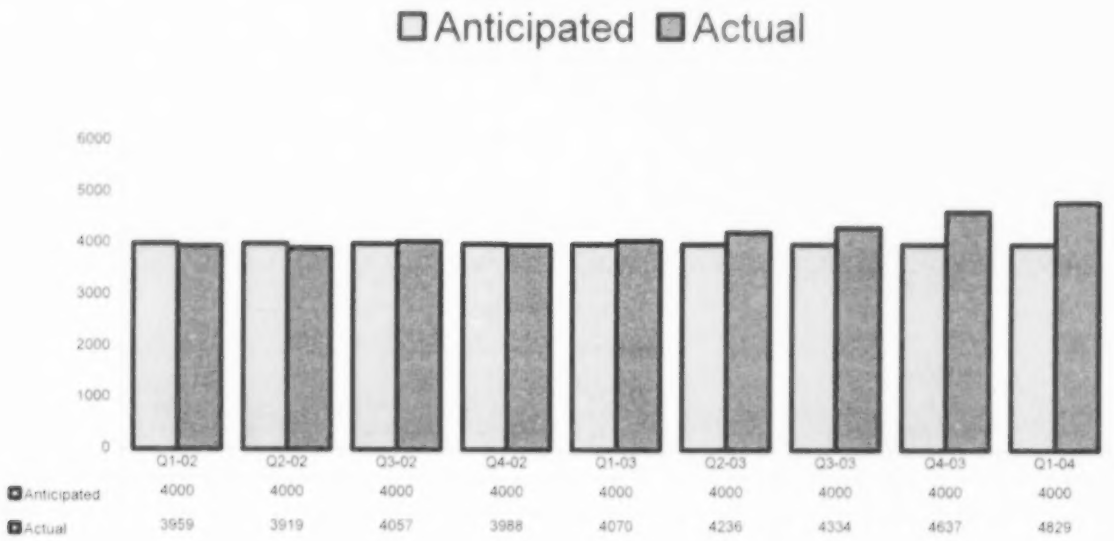


Figure 1. Appeals Inventory, Anticipated vs. Actual

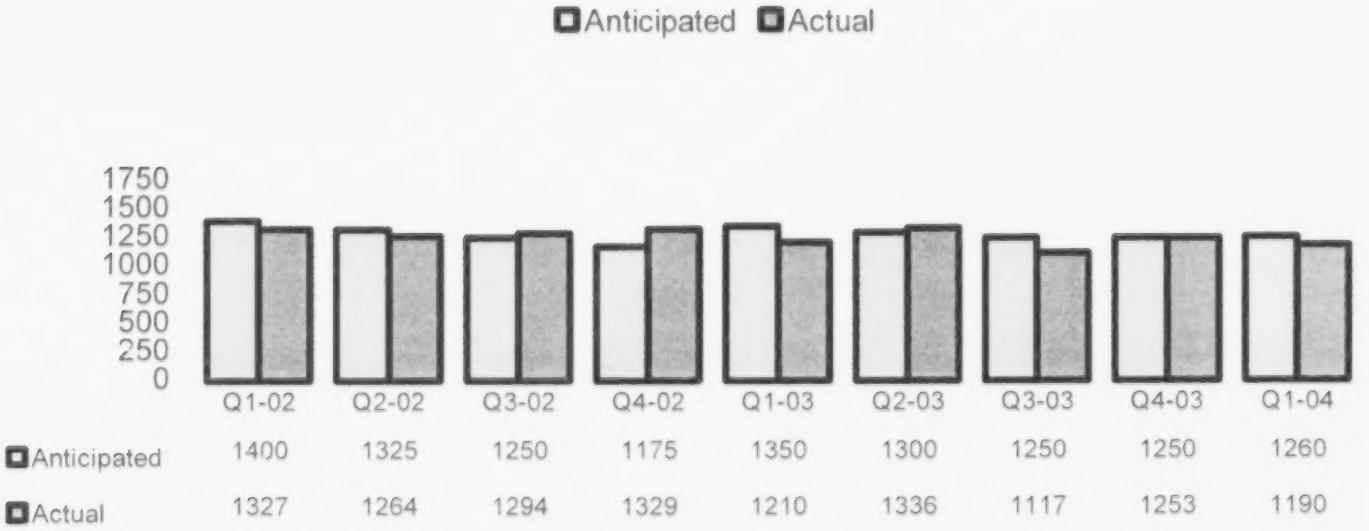
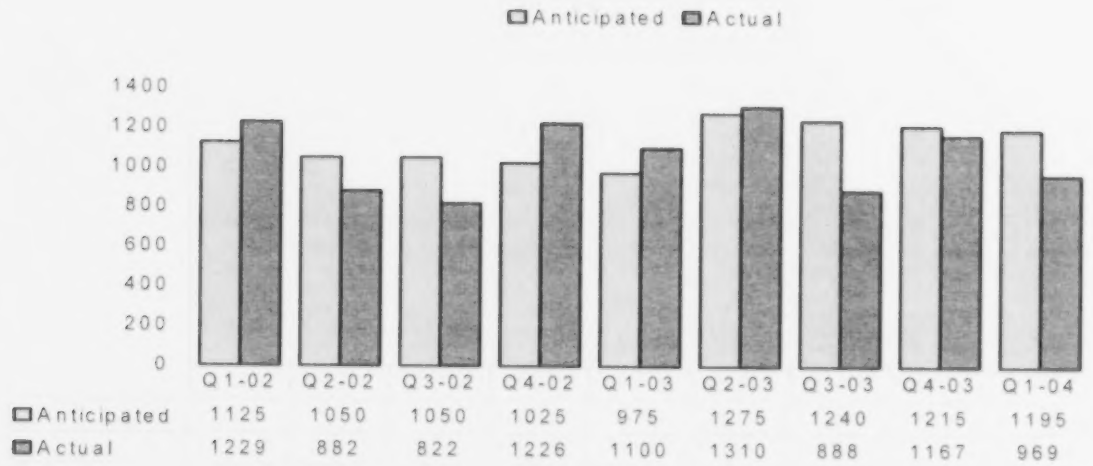


Figure 2. Incoming Appeals, Anticipated vs. Actual



	Q1-02	Q2-02	Q3-02	Q4-02	Q1-03	Q2-03	Q3-03	Q4-03	Q1-04
Anticipated	1125	1050	1050	1025	975	1275	1240	1215	1195
Actual	1229	882	822	1226	1100	1310	888	1167	969

Figure 3. Dispositions, Anticipated vs. Actual

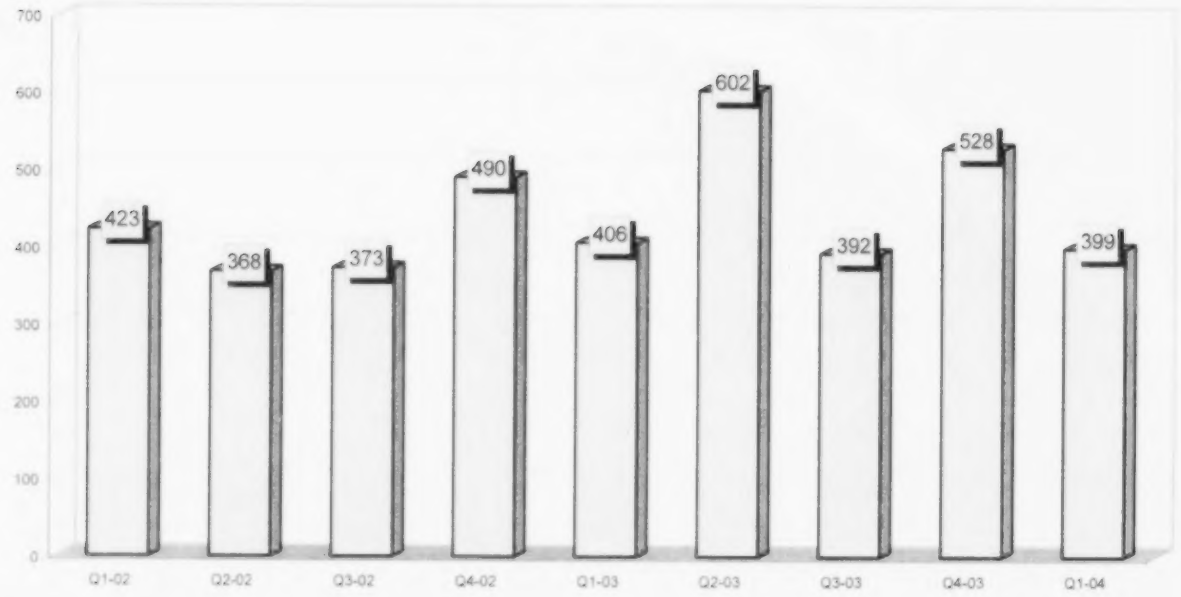


Figure 4. Dispositions from Pre-Hearing processes

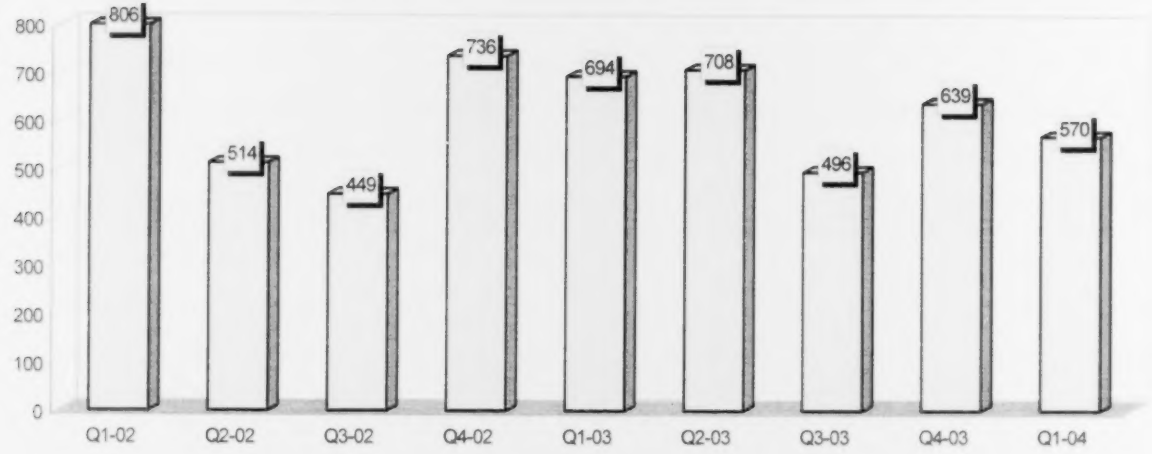
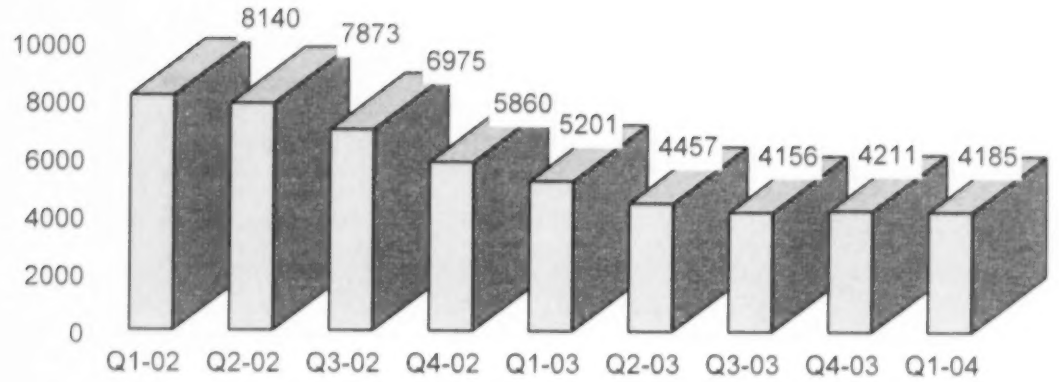


Figure 5. Dispositions from After Hearing processes.



Inactive Inventory Q1 2002 to Q1 2004

B) Communications

Public Information Sessions – The Tribunal conducted three information sessions during the first quarter of 2004. In January, Tribunal adjudicators and staff spoke to dedicated attendees who traveled to Mississauga in the middle of a blizzard. In February, the Tribunal presented a session in Ottawa, and in March, the Tribunal conducted the first of two central Toronto sessions held at Macdonald Block. Community attendance at these sessions continues to be strong. Starting in 2004, the Tribunal will organize information sessions on a two-year schedule.

In February, Tribunal staff and adjudicators organized and attended a mandatory training session. This quarter, the topics included the Canadian Charter of Rights and Freedoms, reconsideration requests and time extension applications.

C) Judicial Review Activity

Tribunal Counsel Office had a busy first quarter handling a number of applications for judicial review. Lawyers from the Tribunal Counsel Office continue to respond to judicial review applications and represent the Tribunal in most instances.

Developments in judicial review applications as of the end of March 2004 are set out below. There are a number of other active judicial reviews not listed, as there was no action on them during this particular quarter.

1. **Decision Nos. 1480/98I (July 27, 2001) and 1480/98 (September 25, 2002)**

   The WSIB granted entitlement to a letter carrier for a rare form of skin cancer, which resulted from exposure to sunlight during the course of her employment. An appeal by the employer was denied in *Decision No. 1480/98I* as the Tribunal found that the worker's skin cancer was a disablement under the Act. The employer then argued that the worker was not entitled to benefits because she was a federal worker, and the type of accident or industrial disease was not covered by the *Government Employees Compensation Act* (GECA). In *Decision No. 1480/98* the Tribunal held that this "disablement" was an accident under the Ontario Act and was recognized under the GECA.

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D) Highlights of Decided Cases

Third, the Panel found that the Appeals Resolution Officer (ARO) could have applied the merits and justice provision to fashion a remedy.

Finally, the Panel adopted the reasoning of Decision No. 2351/00R and determined that, rather than returning the appeal to the board for reconsideration, a determination of the issues should be made forthwith. The Panel therefore applied the merits and justice provision in this instance and, noting that the employer had been outside the Board system for two years, ordered the cancellation of both orders and the full amount of the departure fee.

Decision No. 320/02R (E. Smith) January 14, 2004

This Reconsideration Request was initiated by the accident employer, which had not participated in the original hearing.

The employer advanced several arguments for a reconsideration of the initial decision. The employer decided not to participate in the original hearing because the Board had provided the employer with incorrect information regarding the cost consequences of a successful appeal. The employer submitted that the original Panel's decision was at odds with the assessor's report, and that the evidence before the Panel was too speculative to form the basis of the Panel's decision. The employer proposed to adduce further medical evidence and submissions, and also requested access to all case materials.

The Vice-Chair first noted that, because it had not been a party to the original hearing, the employer could not request a reconsideration as of right. However, following Decision No. 900/97R, she noted that the manner in which the Tribunal becomes aware of a decision that might merit reconsideration is of secondary importance, and decided to exercise the discretion to consider the reconsideration request.

In relation to the incorrect information provided by the Board which the employer had relied upon when deciding not to participate in the original appeal, the Vice-Chair noted that the error was not one that constituted a defect in the administrative process, or one of the original decision-maker. It was a consideration that affected the employer's decision to participate in the appeal process. She noted the importance for the finality of the appeal process.

The Vice-Chair reviewed the original decision and determined that there was in fact sufficient evidence to support the conclusions made, and that the decision was not inconsistent with the assessor's report.

With respect to the new medical evidence that the employer proposed to adduce, the Vice-Chair referred to Decision No. 1103/01R which distinguishes between different types of evidence and their admissibility within the reconsideration process. The Vice-Chair noted that the evidence proposed was in the nature of reply evidence as it would be commissioned for the purpose of refuting some aspect of the original decision, and therefore declared it inappropriate to give that proposed any weight before the impugned decision was made.

In conclusion, finding the arguments put forward by the employer did not meet the threshold test, the Vice-Chair denied the reconsideration request and considered that there was no basis to provide the full record of the original hearing to the employer.

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Decision No. 1501/03 (G. Weir, M. Meslin, D. Broadbent) January 5, 2004

This appeal was initiated by an employer seeking Secondary Injury and Enhancement Fund (SIEF) relief. The worker has been granted benefits for bilateral carpal tunnel syndrome (CTS).

The employer's position was that the worker had previously performed repetitive work with a different employer and had complained of pain within 3 months of work with the accident employer. In addition, the employer noted that the worker was overweight and it provided medical evidence supporting a "causal relationship" between obesity and CTS.

The Panel reviewed the medical information on file and made several observations regarding to CTS. First, the Panel noted that CTS does not develop a lengthy period of time before developing; therefore, because of mere appearance of the condition, it was necessary to approve a request for SIEF relief. Second, the Panel noted that while obesity was a risk factor in the development of CTS, it could not be used to deny an underlying condition that directly causes CTS.

The Panel further noted, however, that the SIEF policy states that the employer shall "if the worker's claim has previously been denied in connection with the absence of evidence that the worker's obesity has increased the degree of medical disability from CTS" as a condition of a prolonged recovery from CTS, the Panel was unable to allow the employer's appeal for SIEF relief.

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